

§ 794.106

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THE “ENTERPRISE”

§ 794.106 Statutory definition of “enterprise.”

The term “enterprise” is defined in section 3(r) of the Act. That definition (insofar as it affects a wholesale or bulk petroleum distributor) is as follows:

“Enterprise” means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

§ 794.107 “Establishment” distinguished.

The “enterprise” referred to in the section 7(b)(3) exemption is to be distinguished from an “establishment”. As used in the Act, the term “establishment”, which is not specially defined therein, refers to a “distinct physical place of business” rather than to “an entire business or enterprise” which may include several separate places of business. (See *Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Bekins Van & Storage Co.*, 352 U.S. 1027; 95 Congressional Record 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., first session, p. 25.) It will be noted from the definition of “enterprise” in section 3(r), as set forth in § 794.106, that the activities of the enterprise may be “performed in one or more establishments,” and sec-

tion 7(b)(3) specifies that the enterprises to which its exemption requirements are applicable will include “an enterprise with more than one bulk storage establishment.”

§ 794.108 Scope of enterprise must be known before exemption tests can be applied.

The scope of the “enterprise” as defined by section 3(r) of the Act must be ascertained before it is possible to apply the tests for exemption contained in section 7(b)(3) which are based on the dollar volume of sales of the “enterprise”. The activities included in the enterprise must be known, and any activities not a part of the enterprise must be excluded before the dollar volume of sales derived from the activities of the enterprise can be computed.

§ 794.109 Statutory basis for inclusion of activities in enterprise.

The “enterprise” for purposes of enterprise coverage under section 3(s) and the exemption provision in section 7(b)(3), is defined in section 3(r) (§ 794.106) in terms of the activities in which it is engaged. All the “related activities” which are “performed * * * by any person or persons for a common business purpose” are included if they are performed “either through unified operation or common control.” This is true even if they are performed by more than one person, or in more than one establishment or by more than one corporate or other organizational unit. The definition specifically includes as a part of the enterprise, departments of an establishment operated through leasing arrangements. These statutory criteria are discussed in more detail in subsequent sections.

§ 794.110 Activities excluded from the enterprise by the statute.

The circumstances under which certain activities will be excluded from the “enterprise” referred to in the Act are made clear by the definition quoted in § 794.106. The definition distinguishes between the related activities performed through unified operation and common control for a common business